**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH**
**AT HYDERABAD**

(***Special Original Jurisdiction***)

**TUESDAY, THE TWENTY SIXTH DAY OF APRIL**
**TWO THOUSAND AND FIVE**

P R E S E N T

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

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**WRIT PETITION NO: 9457 of 2005**

Between :

J.Kailasam, s/o Narayana,
r/o Rajunagar, Ram Reddy Road, Kamareddy, Nizamabad, A.P.

**..... PETITIONER**

**A N D**

1 The Deputy Commissioner of Proh.& Excise, Karimnagar.
2 The Station House Officer, Proh. & Excise, Station Mancherial, Adilabad,

A.P.
3 The Govt. of A.P., rept., by Commissioner, Proh.& Excise,

Nampally, Hyderabad, A.P.

**..... RESPONDENTS**

*Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ of certiorari/mandamus, direction, declaration or order by declaring the action of 3rd respondent in passing the orders dt.8-4-2005 as illegal, arbitrary, discriminatory, unreasonable, unjust, without jurisdiction and opposed to public policy violative of Article 14, 21 and 300A of Constitution of India and also violative of principles of natural justice and set aside the same with costs and issue consequential directions to release the van AP25T8212 EICHER in Cr.No.490/2003-04 of SHO Proh & Excise Mancherial, Adilabad District with costs.*

**Counsel for the Petitioner : MR.K.M.MAHENDER REDDY**

**Counsel for the Respondents: GP FOR PROHIBITION & EXCISE**

*The Court at the stage of admission made the following*: (order follows 2nd page)

O R D E R :

This writ petition is filed to declare the action of the third respondent in passing the orders dated 08-4-2005 as illegal, arbitrary, without jurisdiction and opposed to public policy, violative of Article 14, 21 and 300-A of the Constitution of India and violative of principles of natural justice and set aside the same and consequently to issue directions to release the Eicher Van bearing Regn.No.AP. 25-T-8212 involved in Cr.No.490/2003-04 of SHO (Prohibition and Excise) Mancherial of Adilabad district.

The petitioner-company is doing commission business of agricultural products like paddy, maize, jaggery etc., with valid permits and sold 60.11 quintals of jaggery on credit to M/s. Laxmi Kirana Merchants, Kataram, Karimnagar district. The said jaggery was transported on Eicher Van bearing No.AP-25-T 8212 on hire from Kamareddy with all valid permits but on 12-10-2003 the second respondent seized the said vehicle carrying jaggery at Burgupalli village thanda of Jaipur Mandal of Adilabad district under a cover of panchanama. Thereafter the first respondent issued show cause notice no.662/2003/Proh.& Excise/B2 to the petitioner on 07-11-2003. Pursuant to the said notice, the petitioner submitted his explanation on 24-11-2003 to the first respondent but without considering his explanation the first respondent confiscated the said vehicle containing jaggery and passed an order on 24-8-2004. Assailing the order dated 24-8-2004 passed by the first respondent, the

petitioner preferred an appeal to the third respondent. But the third respondent had dismissed the appeal and passed an order No.18507/2004/CPE/D4, dated 08-4-2005.

Questioning the order No.18507/2004/CPE/D4, dated 08-4-2005 passed by the third respondent, the petitioner filed the present writ petition on the ground that the second respondent has no right to seize the said vehicle containing jaggery, which was transported with valid permits, waybills, transport and agriculture market committee permits etc., and sold to a bonafide purchaser under valid documents. The petitioner contends that the said vehicle cannot be confiscated until and unless the second respondent discharge the burden that the petitioner had intentionally directed the vehicle to unload 60.11 quintals of jaggery to manufacture illicit distilled liquor and mere suspicion cannot be a crime unless it is proved or established that the owner is having knowledge to unload or use jaggery for illicit distilled liquor only at factory, whereas in the present case the driver had lost the route in the night. The analysis report of CE.No.756/2003, dated 17-12-2003 and the sub-division report no.A2/04 dated 21-2-2004 cannot form ground reality to confiscate the said vehicle containing jaggery without hearing the petitioner and supplying its copy to the petitioner.

Heard the learned counsel for the petitioner as well as the learned Govt.Pleader for Prohibition & Excise.

After hearing both sides and without going into the merits or otherwise, I deem it appropriate to direct the respondents to reconsider the case of the petitioner if it is within the parameter of para no. 4 (iii) of the Circular instructions dated 03-11-2002

in Cr.No.4294/DPE/2001/CS passed by the Commissioner of Prohibition and Excise, A.P., Hyderabad, which is as follows:

> *(iii) " The consignment of the black jaggery be permitted without any restriction, if the same is covered by way bills/ permits issued by the Agricultural Market Committee and the invoices are clearly showing the names and addresses of the consignor as well as the consignee*".

If the case of the petitioner is within the above parameter, the respondents are directed to release the Eicher van bearing Regdn.No.AP25T-8212 within six weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is disposed of at the admission stage. No order as to costs.

APRIL26th, 2005. ----------

I S L. ELIPE DHARMA RAO , J.

To

1 The Deputy Commissioner of Proh.& Excise, Karimnagar.
2 The Station House Officer, Proh. & Excise, Station Mancherial,

Adilabad, A.P.
3 The Commissioner, Proh.& Excise, Govt.of A.P., Office at

Nampally, Hyderabad, A.P.

4 1 CC to Govt.Pleader for Prohibition and Excise, High Court

Buildings, High Court of AP Hyderabad (OUT).

5. 1 CC to Mr.K.M.Mahender Reddy, Counsel for the Petitioner,

Bar Association, High Court Buildings, Hyderabad.

6 Two CD Copies.